

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney

BRIAN J. STRETCH (CABN 163973)
Chief, Criminal Division

HANLEY CHEW (CSBN 189985)
Assistant United States Attorney
San Jose Division

150 Almaden Boulevard, Suite 900
San Jose, California 95113
Telephone: (408) 535-5060
Facsimile: (408) 535-5066
E-mail: Hanley.Chew@usdoj.gov

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
TONY XIAOLIANG WANG,
Defendant.

No. CR 07-00305 RMW

**GOVERNMENT'S RESPONSE TO
PRESENTENCE REPORT**

Sentencing Date: November 13, 2007
Sentencing Time: 10:00 a.m.
Before: The Honorable Ronald M. Whyte

On or about May 9, 2007, the federal Grand Jury in San Jose, California returned a nine-count indictment charging the defendant Tony Xiaoliang Wang ("defendant") with three counts of mail fraud (counts one through three), in violation of 18 U.S.C. § 1341, and six counts of wire fraud (counts four through seven), in violation of 18 U.S.C. § 1343. On or about August 27, 2007, defendant pled guilty to count three of the information.

On or about November 6, 2007, the Probation Office issued its Pre-Sentence Report ("PSR") in this matter. The PSR calculated that defendant's base offense level was 7 (pursuant to U.S.S.G. § 2B1.1(a)(1)) (PSR ¶ 24). The PSR also calculated that a 6-level enhancement for amount of loss in the offense (pursuant to U.S.S.G. § 2B1.1(b)(1)(D)) (PSR ¶ 25) was

appropriate. With the 2-level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), defendant's final adjusted offense level is 11 (PSR ¶ 33). The Probation Office further determined that defendant has one criminal history point and is in Criminal History Category I (PSR ¶ 37). Based on the defendant's criminal history, the Probation Office calculated defendant's applicable sentencing guideline range to be 8 to 14 months (PSR ¶ 55).

On November 6, 2007, the Probation Office also filed its final sentencing recommendation, which stated that a "sentence of three years probation, including six months in a residential reentry center followed by 90 days of home confinement with electronic monitoring." Probation Office Sentencing Recommendation, p. 2. The Probation Office notes that such a sentence is "sufficient to achieve the statutory purposes of sentencing, including punishment, general deterrence, and protection of the community." See id.

The government has no objections to the factual findings of the PSR or the Probation Office's sentencing guideline calculations. Therefore, the government respectfully requests that the Court find that defendant's base offense level is 7 pursuant to U.S.S.G. § 2B1.1(a)(1) and that a 6-level enhancement for amount of loss pursuant to § 2B1.1(b)(1)(D) be applied. Assuming a 2-level reduction for acceptance of responsibility, the Court should find that defendant's final adjusted offense level is 11. With only one criminal history point, the Court should also find that defendant is in Criminal History Category I and that his applicable guideline sentencing range is 8-14 months. Given the nature and severity of defendant's offense (i.e., the amount of loss, the three-year duration of the offense, the number of victims and the planning involved with the offense), the government believes, and recommends, that an appropriate sentence is 4-month term of imprisonment to be followed by 3 years of supervised release (with a condition of a 120-day period of home confinement).

Dated: November 6, 2007

SCOTT N. SCHOOLS
United States Attorney

/s/ Hanley Chew
HANLEY CHEW
Assistant United States Attorney